

1 BILL NO. S-83-08- 43

2 SPECIAL ORDINANCE NO. S- 178-83

3 AN ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE,
4 INDIANA, TO GUARANTEE, BY AND THROUGH THE CITY
5 OF FORT WAYNE, INDIANA LIGHT AND POWER UTILITY
6 FUND, A CERTAIN PROMISSORY NOTE AND MORTGAGE
7 EXECUTED BY THE COMMUNITY DEVELOPMENT CORPORATION
8 AND ASSUMED BY THE KEKIONGA DEVELOPMENT CORPORATION

9 WHEREAS, on August 1, 1983, this Common Council adopted
10 Resolution No. R-83-08-01, which Resolution in part resolved to
11 guarantee the payment of a \$900,000.00 mortgage by the Community
12 Development Corporation and the Kekionga Development Corporation
13 to Brunswick Corporation, or its assignees, said guarantee to be
14 from the City Light Lease revenues; and

15 WHEREAS, the financing has been arranged and the form of
16 guaranty determined;

17 NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE
18 CITY OF FORT WAYNE:

19 SECTION 1. This Common Council finds the following to be
20 the form of transaction for the purchase by the Community Develop-
21 ment Corporation of the "Mercury Marine Building" owned by
22 Brunswick Corporation; Community Development Corporation will pay
23 \$1,400,000.00 for said building, \$500,000.00 on the day of closing,
24 and the balance by executing a real estate mortgage and promissory
25 note in favor of Brunswick Corporation in the sum of \$900,000.00
26 payable at the rate of \$12,398.40 per month, said payments being
27 of principal and interest with interest at 11% per annum, and
28 with the entire principal balance payable five years from the
29 date of the execution of the promissory note. It is further
30 understood that said promissory note and real estate mortgage
31 shall be assigned by Brunswick Corporation to Fort Wayne National
32 Bank. The Community Development Corporation shall then sell said
building to the Kekionga Development Corporation and the Kekionga
Development Corporation will assume liability for \$600,000.00 of

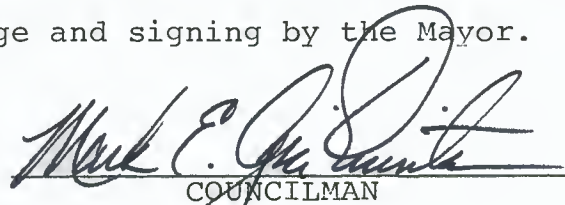
1 the promissory note and mortgage payable to Fort Wayne National
2 Bank as assignee.

3 SECTION 2. The City of Fort Wayne, by and through its Light
4 and Power Utility Fund (commonly known as City Light Lease Revenue)
5 hereby guarantees the payments by Community Development Corporation
6 and Kekionga Development Corporation, under the promissory note
7 and real estate mortgage, to Fort Wayne National Bank as assignee
8 of Brunswick Corporation, said guarantee being in substantially
9 the form of the Continuing Guaranty of Payment attached hereto,
10 as a part hereof, as Exhibit "A".


11 SECTION 3. The City Controller is hereby directed to set
12 aside out of the Light and Power Utility Fund the sum of
13 \$900,000.00 for the purpose of this Guaranty. Each year, on the
14 anniversary date of the promissory note and real estate mortgage
15 referred to herein, this Guaranty shall automatically reduce by
16 the amount of principal payments made during the preceding year.

17 SECTION 4. This Common Council agrees that in the event
18 the Fort Wayne National Bank requires payment on this Guaranty
19 that this Common Council shall appropriate the funds referred to
20 above earmarked for this purpose for said payment.

21 SECTION 5. This Ordinance shall be in full force and
22 effect from and after its passage and signing by the Mayor.

23
24 
25 COUNCILMAN

26 APPROVED AS TO FORM AND LEGALITY
27 THIS 22 DAY OF August, 1983.

28 
29 Bruce O. Boxberger, Corporation Counsel
30
31
32

GUARANTY, dated as of September ____, 1983, by the CITY OF FORT WAYNE, INDIANA, a municipal corporation organized and existing under the laws of the State of Indiana by and through its Light and Power Utility Fund (the "City").

WHEREAS, the Fort Wayne National Bank, a national banking association (the "Bank") intends to purchase a promissory note executed by the Community Development Corporation of Fort Wayne, an Indiana not-for-profit corporation, as maker ("CDC"), on September ____, 1983, to Brunswick Corporation, as payee ("Brunswick"), in the principal sum of \$900,000.00 (the "Promissory Note"), and a real estate mortgage securing the Promissory Note executed by CDC, as mortgagor, on September ____, 1983, to Brunswick, as mortgagee, on the real estate commonly known as 1818 Research Drive, Fort Wayne, Indiana ("Mortgage") (a copy of the Promissory Note and Mortgage being attached hereto as "Exhibit A"); and

WHEREAS, CDC will assign to Kekionga Development Corporation, an Indiana not-for-profit corporation ("Kekionga"), and Kekionga will assume \$600,000.00 of the Promissory Note and Mortgage as partial consideration for the sale of the mortgaged real estate by CDC to Kekionga; and

WHEREAS, the Bank is willing to purchase the Promissory Note and Mortgage from Brunswick on the condition that the City shall have executed and delivered this absolute and unconditional guaranty of the Promissory Note and Mortgage obligation;

NOW, THEREFORE, the City agrees as follows:

1. The City hereby absolutely and unconditionally guarantees the due and punctual payment of all amounts due and payable under the Promissory Note, whether payable by CDC or Kekionga, and whether by demand, lapse of time, acceleration or otherwise, including payments of principal, interest and costs of collection (including attorneys' fees) payable in the event of default, without relief from valuation or appraisement laws. This Guaranty is a guaranty of payment and not of collectability or performance and is in no way conditioned or contingent upon any attempt by the Bank to collect from the CDC or Kekionga, or any other obligor liable under the Promissory Note, or to realize upon the mortgaged real estate or any other collateral securing the Promissory Note in order to hold the City liable under this Guaranty. The City understands that the Bank is relying upon this Guaranty and is not willing to purchase the Promissory Note and Mortgage from Brunswick unless the City is liable to the Bank under the terms of this Guaranty.

2. This Guaranty becomes effective immediately upon its being signed by the City, and continues indefinitely, and is not affected by any action subsequently taken by the City.

3. In addition to the foregoing waivers of rights by the City and its grant of rights to the Bank, the City hereby:

(a) waives all presentments, demands, protests and notices of any kind, including, without limitation, notice of acceptance hereof by the Bank, the creation or existence of any additional indebtedness under the Promissory Note, any default by CDC, Kekionga or any other obligor liable under the Promissory Note, and any action taken or omitted by the Bank;

(b) consents to any and all subordinations, indulgences, extensions, renewals, compositions or alterations which the Bank may grant, consent to or permit with respect to the Promissory Note, and any other obligor liable under the Promissory Note;

(c) consents to any and all substitutions, modifications, exchanges and additions and releases of (i) the mortgaged real estate or other collateral securing the Promissory Note, or (ii) any other obligor liable under the Promissory Note, and also consents to settlement with or release of any such obligor which the Bank may grant, consent to, or permit;

(d) waives (i) all diligence by the Bank in collection, and (ii) all defenses arising from any failure of the Bank to protect, perfect or realize upon the Bank's interests, rights and remedies with respect to the Promissory Note, any obligor liable for payments due under the Promissory Note, the mortgaged real estate or any other collateral securing the Promissory Note now existing or hereafter arising;

(e) agrees that the Bank may take or omit to take any other action with respect to CDC or Kekionga, any other obligor liable under the Promissory Note, the mortgaged real estate or any other collateral for the Promissory Note, whether now existing or hereafter arising, without in any way affecting the liability of any obligor or other party not dealt with;

(f) waives all defenses which CDC, Kekionga or any other obligor liable under the Promissory Note could assert against the Bank;

(g) waives all other suretyship defenses and defenses in the nature thereof;

(h) agrees that the Bank shall have the exclusive right to determine how, when and what applications of payments and credits, if any, shall be made on the Promissory Note and the order of such applications;

(i) agrees that partial performance of this Guaranty does not release the City as to any unperformed obligations hereunder;

(j) agrees that the Bank's giving any notice to or obtaining any consent of the City or any other party liable under the Promissory Note which is not required by this Guaranty shall not constitute Bank's waiver of any of the foregoing provisions of this Guaranty.

4. The City covenants, represents and warrants:

(a) to the best knowledge of the City, there is no fact known to the City which materially adversely affects or in the future may materially adversely affect the financial condition of the City which would prohibit or impair the ability of the City to perform its obligations contained in this Guaranty;

(b) the City is aware of no action, suit, investigation or proceeding pending or, to the best knowledge of the City, threatened against the City, which may result in any material adverse change in the financial condition of the City which would prohibit or impair the ability of the City to perform its obligations contained in this Guaranty;

(c) the execution, delivery and performance of this Guaranty by the City will not result in the violation of or be in conflict with or constitute a default under the charter or constitution of the City, or any term or provision of any mortgage, indenture, lease, contract, agreement or any other instrument, or any judgment, decree, governmental order, statute, ordinance, rule or regulation, by which the City is bound or to which any of the City's assets are subject. No approval by, authorization of, or filing with any federal, state or other governmental commission, agency, or authority is necessary in connection with the execution and delivery by the City of this Guaranty. The City is not a party to, or otherwise subject to any provision contained in any instrument evidencing indebtedness of the City, any agreement relating thereto, or any other contract or agreement (including the City's charter and constitution) which restricts or otherwise limits the incurring of the indebtedness represented by this Guaranty;

(d) the execution and delivery of this Guaranty by the City has been duly authorized by and is a legal, valid and binding obligation on the City enforceable in accordance with its terms.

5. This Guaranty shall be binding upon the City, its successors and assigns, but only out of fund specifically set aside for same in the City of Fort Wayne Light and Power Utility Fund. The Bank shall have the right to transfer the Promissory Note and Mortgage in whole or in part to assignees, and this Guaranty shall continue to apply to the Promissory Note and Mortgage notwithstanding by whom held.

6. All communications hereunder shall be delivered in person or sent by first class mail and, if to the Bank, to Fort Wayne National Bank, 110 West Berry Street, Fort Wayne, Indiana, 46802, Attention: Commercial Loan Department, with a copy to Shoaff, Parker & Keegan, 2400 Fort Wayne National Bank Building, Fort Wayne, Indiana, 46802; and, if to the City, to the Office of the Mayor, City-County Building, 1 Main Street, Fort Wayne, Indiana, 46802, Attention: Mayor of the City of Fort Wayne, with a copy to Attorney for the City of Fort Wayne, Legal Department, City-County Building, 1 Main Street, Fort Wayne, Indiana, 46802.

7. This Guaranty is the final, complete and exclusive statement of the agreement between the Bank and the City with respect to the guaranty of payment of the Promissory Note, and all prior negotiations, representations, promises and conditions are merged herein. This Guaranty may not be modified except by a writing signed by the Bank and the City.

IN WITNESS WHEREOF, the City of Fort Wayne, Indiana, has executed this absolute and unconditional Guaranty on the date and year first above written.

CITY OF FORT WAYNE, INDIANA

By _____
Winfield C. Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy, Clerk

Read the first time in full and on motion by Gia Quinta, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 8-23-83

Sandra E. Kennedy
CITY CLERK

Read the third time in full and on motion by Gia Quinta, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 8-29-83

Sandra E. Kennedy
- CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~) (~~APPROPRIATION~~) ORDINANCE (RESOLUTION) NO. 1-178-83 on the 29th day of August, 1983.

ATTEST:

(SEAL)

Sandra E. Kennedy
CITY CLERK

Ray A. Ebert
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 20th day of August, 1983, at the hour of 10:30 o'clock 7 M., E.S.T.

Sandra E. Kennedy
CITY CLERK

Approved and signed by me this 30th day of August 1983, at the hour of 11:30 o'clock 7 M., E.S.T.

WIN MOSES, JR.
- MAYOR

BILL NO. S-83-08-43

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN
ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO
GUARANTEE, BY AND THROUGH THE CITY OF FORT WAYNE, INDIANA LIGHT AND
POWER UTILITY FUND, A CERTAIN PROMISSORY NOTE AND MORTGAGE EXECUTED
BY THE COMMUNITY DEVELOPMENT CORPORATION AND ASSUMED BY THE KEKIONGA
DEVELOPMENT CORPORATION

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE PASS.

MARK E. GIAQUINTA, CHAIRMAN

JAMES S. STIER, VICE CHAIRMAN

JANET G. BRADBURY

SAMUEL J. TALARICO

DONALD J. SCHMIDT

Mark E. Giaquinta

James S. Stier

Janet G. Bradbury

Samuel J. Talarico

Donald J. Schmidt

Concurred in 8-24. O. Kennedy

DOCKET SHEET

TITLE OF ORDINANCE Special

S 83-08-43

DEPARTMENT REQUESTING ORDINANCE Economic Development Commission

SYNOPSIS OF ORDINANCE Approves form of Guaranty previously approved
by Resolution No. R-83-08-01 in favor of Fort Wayne National Bank
in the sum of \$900,000.00 out of Light Lease revenues.

EFFECT OF PASSAGE Completion of Micro Source package.

EFFECT OF NON-PASSAGE None of the above.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$900,000.00 (contingent)

ASSIGNED TO COMMITTEE (PRESIDENT) _____